

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

TRUSTEES OF THE SERVICE  
EMPLOYEES INTERNATIONAL UNION  
LOCAL 49 WELFARE TRUST.

No. 3:11-cv-01302-HU

## FINDINGS AND RECOMMENDATION

Plaintiff,

V.

COAST INDUSTRIES, INC.,  
dba Coast Janitorial Services,

Defendant.

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Brownstein, Rask, et al.  
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Of Attorneys for Plaintiff

1 **HUBEL, J.,**

2 On April 13, 2012, Plaintiff filed this action pursuant to the  
3 Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001  
4 et seq., and the Labor Management Relations Act of 1947, 29 U.S.C.  
5 § 141 et seq., seeking to recover unpaid contributions to the  
6 Service Employees International Union 49 Welfare Trust  
7 (hereinafter, "the Fund").

8 Bernadette Artharee ("Artharee"), registered agent and owner  
9 of defendant Coast Industries, Inc. ("Defendant"), was served  
10 personally on November 3, 2011. (Docket No. 3 at 3.) Artharee  
11 failed to move or plead in response to Plaintiff's Complaint, or  
12 the First Amended Complaint which was filed and served on April 13  
13 and May 23, 2012, respectively. As a result, the undersigned  
14 entered a Default Order on June 14, 2012. (Docket No. 22.)  
15 Plaintiff now moves for default judgment against Defendant. (Docket  
16 No. 23.)

17 The present action deals with the time period February 2011  
18 through November 2011 (the "time period at issue"). At all times  
19 material to this lawsuit, Defendant was a signatory to a collective  
20 bargaining agreement ("CBA") in which it agreed to pay fringe  
21 benefits to the Fund on behalf of its employees that performed work  
22 covered by the CBA. Defendant also agreed to be bound the terms  
23 and conditions of the Trust Agreement that created the Fund. The  
24 Trust Agreement provides that, in the event a signatory fails to  
25 pay its fringe benefit contributions by the date established by the  
26 CBA (the 20th day of the month following the month in which work  
27 covered by the CBA was performed), interest must be assessed on the  
28 delinquent or late-paid fringe benefit contributions at the rate of

1 eight percent annum from the due date until it is paid. The Trust  
 2 Agreement also requires payment of attorneys' fees and the  
 3 assessment of liquidated damages in the amount of twenty percent of  
 4 the delinquent or late-paid fringe benefit contributions.

5 According to Plaintiff's counsel, Cary Cadonau ("Cardonau"),  
 6 his firm calculated the liquidated damages and interest owed by  
 7 Defendant for the period at issue utilizing the rates set forth  
 8 above. Based on those calculations, and the chart provided below  
 9 which details the dates Defendant's payments were received,  
 10 Plaintiff requests that judgment be entered against Defendant for  
 11 \$98.67 in interest and \$950.86<sup>1</sup> in liquidated damages.

Month/Year	Due Date	Date Paid	Benefits
Feb. 2011	3/20/2011	3/30/2012	\$453.68
Mar. 2011	4/20/2011	7/18/2011	\$453.68
Apr. 2011	5/20/2011	7/18/2011	\$453.68
May 2011	6/20/2011	7/18/2011	\$453.68
June 2011	7/20/2011	10/30/2011	\$489.94
July 2011	8/20/2011	10/30/2011	\$490.06
Aug. 2011	9/20/2011	10/31/2011	\$489.94
Sept. 2011	10/20/2011	10/31/2011	\$490.04
Oct. 2011	11/20/2011	2/23/2012	\$489.94
Nov. 2011	12/20/2011	2/13/2012	\$489.94

24 Plaintiff also requests that judgment be entered against  
 25 Defendant for \$2,782.50 in attorneys' fees (13.25 hours x \$210 per  
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27 <sup>1</sup> 20 % of the sum of the benefits column in the table below.  
 28

1 hour) and \$433.75 in court costs incurred herein (\$350 filing fee;  
2 \$64.75 in service costs; and a \$20 prevailing party fee). The  
3 Court finds these amounts to be reasonable and proper in light of  
4 the services performed and results obtained in this action.  
5

6 I therefore recommend Plaintiff's motion (Docket No. 23) for  
7 default judgment be **GRANTED**, as follows: (1) Defendant should be  
8 ordered to pay \$98.67 in interest and \$950.86 in liquidated damages  
9 based on its failure to make timely fringe benefit contributions to  
10 the Fund; and (2) Defendant should be ordered to pay attorney's  
11 fees in the amount of \$2,782.50 and costs in the amount of \$433.75.  
12

13 ***SCHEDULING ORDER***

14 The Findings and Recommendation will be referred to a district  
15 judge. Objections, if any, are due **November 13, 2012**. If no  
16 objections are filed, then the Findings and Recommendation will go  
17 under advisement on that date. If objections are filed, then a  
18 response is due **December 4, 2012**. When the response is due or  
19 filed, whichever date is earlier, the Findings and Recommendation  
20 will go under advisement.  
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22 Dated this 25th day of October, 2012.  
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24 /s/ Dennis J. Hubel  
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26 DENNIS J. HUBEL  
27 United States Magistrate Judge  
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